
SUBSTITUTE HOUSE BILL 2111

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Conway, Wood, Green, Moeller, Darneille, Miloscia, Dickerson, P. Sullivan, Morrell, McDermott, Grant, Hudgins, Simpson and Ormsby)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to making the governor the public employer of adult
2 family home providers; amending RCW 41.56.030, 41.56.113, 41.04.810,
3 43.01.047, and 70.128.040; reenacting and amending RCW 70.128.010;
4 adding a new section to chapter 41.56 RCW; adding a new section to
5 chapter 70.128 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **PART I - COLLECTIVE BARGAINING**

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.56 RCW
9 to read as follows:

10 (1) In addition to the entities listed in RCW 41.56.020, this
11 chapter applies to the governor with respect to adult family home
12 providers. Solely for the purposes of collective bargaining and as
13 expressly limited under subsections (2) and (3) of this section, the
14 governor is the public employer of adult family home providers who,
15 solely for the purposes of collective bargaining, are public employees.
16 The public employer shall be represented for bargaining purposes by the
17 governor or the governor's designee.

1 (2) There shall be collective bargaining, as defined in RCW
2 41.56.030, between the governor and adult family home providers, except
3 as follows:

4 (a) A statewide unit of all adult family home providers is the only
5 unit appropriate for purposes of collective bargaining under RCW
6 41.56.060.

7 (b) The exclusive bargaining representative of adult family home
8 providers in the unit specified in (a) of this subsection shall be the
9 organization certified by the commission as the sole representative
10 after the commission conducts a cross-check comparing bargaining
11 authorization cards against the department of social and health
12 services' records and finds that majority support for the organization
13 exists.

14 (i) The commission shall grant a prospective representative
15 intervener status if that organization submits authorization cards from
16 a majority of adult family home providers in the unit within five days
17 of the initial request for recognition.

18 (ii) In the event that two or more prospective representatives have
19 valid authorization cards from the same individual within the unit, the
20 commission shall add the cards to both organizations' total number of
21 authorization cards.

22 (iii) In the event that the commission finds that there is majority
23 support for more than one organization, the commission shall certify
24 the organization with the greatest number of authorization cards as the
25 exclusive bargaining representative. If the commission finds that
26 there is majority support for more than one organization and that there
27 is a tie, the commission shall hold a run-off election to determine the
28 organization to be certified as the exclusive bargaining
29 representative.

30 (c) Notwithstanding the definition of "collective bargaining" in
31 RCW 41.56.030(4), the scope of collective bargaining for adult family
32 home providers under this section shall be limited solely to: (i)
33 Economic compensation, such as manner and rate of subsidy and
34 reimbursement, including tiered reimbursements; (ii) health and welfare
35 benefits; (iii) professional development and training; (iv) labor-
36 management committees; (v) grievance procedures; and (vi) other
37 economic matters. Retirement benefits shall not be subject to

1 collective bargaining. By such obligation neither party shall be
2 compelled to agree to a proposal or be required to make a concession
3 unless otherwise provided in this chapter.

4 (d) In addition to the entities listed in the mediation and
5 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
6 41.56.480, the provisions apply to the governor or the governor's
7 designee and the exclusive bargaining representative of adult family
8 home providers, except that:

9 (i) In addition to the factors to be taken into consideration by an
10 interest arbitration panel under RCW 41.56.465, the panel shall
11 consider the financial ability of the state to pay for the compensation
12 and benefit provisions of a collective bargaining agreement.

13 (ii) The decision of the arbitration panel is not binding on the
14 legislature and, if the legislature does not approve the request for
15 funds necessary to implement the compensation and benefit provisions of
16 the arbitrated collective bargaining agreement, the decision is not
17 binding on the state.

18 (e) Adult family home providers do not have the right to strike.

19 (3) Adult family home providers who are public employees solely for
20 the purposes of collective bargaining under subsection (1) of this
21 section are not, for that reason, employees of the state for any other
22 purpose. This section applies only to the governance of the collective
23 bargaining relationship between the employer and adult family home
24 providers as provided in subsections (1) and (2) of this section.

25 (4) This section does not create or modify:

26 (a) The department's authority to establish a plan of care for each
27 consumer or its core responsibility to manage long-term care services
28 under chapter 70.128 RCW, including determination of the level of care
29 that each consumer is eligible to receive. However, at the request of
30 the exclusive bargaining representative, the governor or the governor's
31 designee appointed under chapter 41.80 RCW shall engage in collective
32 bargaining, as defined in RCW 41.56.030(4), with the exclusive
33 bargaining representative over how the department's core responsibility
34 affects hours of work for adult family home providers. This subsection
35 shall not be interpreted to require collective bargaining over an
36 individual consumer's plan of care;

37 (b) The department's obligation to comply with the federal medicaid
38 statute and regulations and the terms of any community-based waiver

1 granted by the federal department of health and human services and to
2 ensure federal financial participation in the provision of the
3 services;

4 (c) The legislature's right to make programmatic modifications to
5 the delivery of state services under chapter 70.128 RCW, including
6 standards of eligibility of consumers and adult family home providers
7 participating in the programs under chapter 70.128 RCW, and the nature
8 of services provided. The governor shall not enter into, extend, or
9 renew any agreement under this chapter that does not expressly reserve
10 the legislative rights described in this subsection (4)(c);

11 (d) The residents', parents', or legal guardians' right to choose
12 and terminate the services of any licensed adult family home provider;
13 and

14 (e) RCW 43.43.832, 43.20A.205, or 74.15.130.

15 (5) Upon meeting the requirements of subsection (6) of this
16 section, the governor must submit, as a part of the proposed biennial
17 or supplemental operating budget submitted to the legislature under RCW
18 43.88.030, a request for funds necessary to implement the compensation
19 and benefit provisions of a collective bargaining agreement entered
20 into under this section or for legislation necessary to implement the
21 agreement.

22 (6) A request for funds necessary to implement the compensation and
23 benefit provisions of a collective bargaining agreement entered into
24 under this section shall not be submitted by the governor to the
25 legislature unless the request has been:

26 (a) Submitted to the director of financial management by October
27 1st prior to the legislative session at which the requests are to be
28 considered; and

29 (b) Certified by the director of financial management as
30 financially feasible for the state or reflective of a binding decision
31 of an arbitration panel reached under subsection (2)(d) of this
32 section.

33 (7) The legislature must approve or reject the submission of the
34 request for funds as a whole. If the legislature rejects or fails to
35 act on the submission, any collective bargaining agreement must be
36 reopened for the sole purpose of renegotiating the funds necessary to
37 implement the agreement.

1 (8) If, after the compensation and benefit provisions of an
2 agreement are approved by the legislature, a significant revenue
3 shortfall occurs resulting in reduced appropriations, as declared by
4 proclamation of the governor or by resolution of the legislature, both
5 parties shall immediately enter into collective bargaining for a
6 mutually agreed upon modification of the agreement.

7 (9) After the expiration date of any collective bargaining
8 agreement entered into under this section, all of the terms and
9 conditions specified in the agreement remain in effect until the
10 effective date of a subsequent agreement, not to exceed one year from
11 the expiration date stated in the agreement.

12 (10) In enacting this section, the legislature intends to provide
13 state action immunity under federal and state antitrust laws for the
14 joint activities of adult family home providers and their exclusive
15 bargaining representative to the extent the activities are authorized
16 by this chapter.

17 **Sec. 2.** RCW 41.56.030 and 2006 c 54 s 2 are each amended to read
18 as follows:

19 As used in this chapter:

20 (1) "Public employer" means any officer, board, commission,
21 council, or other person or body acting on behalf of any public body
22 governed by this chapter, or any subdivision of such public body. For
23 the purposes of this section, the public employer of district court or
24 superior court employees for wage-related matters is the respective
25 county legislative authority, or person or body acting on behalf of the
26 legislative authority, and the public employer for nonwage-related
27 matters is the judge or judge's designee of the respective district
28 court or superior court.

29 (2) "Public employee" means any employee of a public employer
30 except any person (a) elected by popular vote, or (b) appointed to
31 office pursuant to statute, ordinance or resolution for a specified
32 term of office as a member of a multimember board, commission, or
33 committee, whether appointed by the executive head or body of the
34 public employer, or (c) whose duties as deputy, administrative
35 assistant or secretary necessarily imply a confidential relationship to
36 (i) the executive head or body of the applicable bargaining unit, or
37 (ii) any person elected by popular vote, or (iii) any person appointed

1 to office pursuant to statute, ordinance or resolution for a specified
2 term of office as a member of a multimember board, commission, or
3 committee, whether appointed by the executive head or body of the
4 public employer, or (d) who is a court commissioner or a court
5 magistrate of superior court, district court, or a department of a
6 district court organized under chapter 3.46 RCW, or (e) who is a
7 personal assistant to a district court judge, superior court judge, or
8 court commissioner. For the purpose of (e) of this subsection, no more
9 than one assistant for each judge or commissioner may be excluded from
10 a bargaining unit.

11 (3) "Bargaining representative" means any lawful organization which
12 has as one of its primary purposes the representation of employees in
13 their employment relations with employers.

14 (4) "Collective bargaining" means the performance of the mutual
15 obligations of the public employer and the exclusive bargaining
16 representative to meet at reasonable times, to confer and negotiate in
17 good faith, and to execute a written agreement with respect to
18 grievance procedures and collective negotiations on personnel matters,
19 including wages, hours and working conditions, which may be peculiar to
20 an appropriate bargaining unit of such public employer, except that by
21 such obligation neither party shall be compelled to agree to a proposal
22 or be required to make a concession unless otherwise provided in this
23 chapter.

24 (5) "Commission" means the public employment relations commission.

25 (6) "Executive director" means the executive director of the
26 commission.

27 (7) "Uniformed personnel" means: (a) Law enforcement officers as
28 defined in RCW 41.26.030 employed by the governing body of any city or
29 town with a population of two thousand five hundred or more and law
30 enforcement officers employed by the governing body of any county with
31 a population of ten thousand or more; (b) correctional employees who
32 are uniformed and nonuniformed, commissioned and noncommissioned
33 security personnel employed in a jail as defined in RCW 70.48.020(5),
34 by a county with a population of seventy thousand or more, and who are
35 trained for and charged with the responsibility of controlling and
36 maintaining custody of inmates in the jail and safeguarding inmates
37 from other inmates; (c) general authority Washington peace officers as
38 defined in RCW 10.93.020 employed by a port district in a county with

1 a population of one million or more; (d) security forces established
2 under RCW 43.52.520; (e) fire fighters as that term is defined in RCW
3 41.26.030; (f) employees of a port district in a county with a
4 population of one million or more whose duties include crash fire
5 rescue or other fire fighting duties; (g) employees of fire departments
6 of public employers who dispatch exclusively either fire or emergency
7 medical services, or both; or (h) employees in the several classes of
8 advanced life support technicians, as defined in RCW 18.71.200, who are
9 employed by a public employer.

10 (8) "Institution of higher education" means the University of
11 Washington, Washington State University, Central Washington University,
12 Eastern Washington University, Western Washington University, The
13 Evergreen State College, and the various state community colleges.

14 (9) "Home care quality authority" means the authority under chapter
15 74.39A RCW.

16 (10) "Individual provider" means an individual provider as defined
17 in RCW 74.39A.240(4) who, solely for the purposes of collective
18 bargaining, is a public employee as provided in RCW 74.39A.270.

19 (11) "Child care subsidy" means a payment from the state through a
20 child care subsidy program established pursuant to RCW 74.12.340 or
21 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
22 program.

23 (12) "Family child care provider" means a person who: (a) Provides
24 regularly scheduled care for a child or children in the home of the
25 provider or in the home of the child or children for periods of less
26 than twenty-four hours or, if necessary due to the nature of the
27 parent's work, for periods equal to or greater than twenty-four hours;
28 (b) receives child care subsidies; and (c) is either licensed by the
29 state under RCW 74.15.030 or is exempt from licensing under chapter
30 74.15 RCW.

31 (13) "Adult family home provider" means a provider as defined in
32 RCW 70.128.010 who receives payments from the medicaid and state-funded
33 long-term care programs.

34 **Sec. 3.** RCW 41.56.113 and 2006 c 54 s 3 are each amended to read
35 as follows:

36 (1) Upon the written authorization of an individual provider
37 (~~(or)~~), a family child care provider, or an adult family home provider

1 within the bargaining unit and after the certification or recognition
2 of the bargaining unit's exclusive bargaining representative, the state
3 as payor, but not as the employer, shall, subject to subsection (3) of
4 this section, deduct from the payments to an individual provider
5 (~~(or)~~), a family child care provider, or an adult family home provider
6 the monthly amount of dues as certified by the secretary of the
7 exclusive bargaining representative and shall transmit the same to the
8 treasurer of the exclusive bargaining representative.

9 (2) If the governor and the exclusive bargaining representative of
10 a bargaining unit of individual providers (~~(or)~~), family child care
11 providers, or adult family home providers enter into a collective
12 bargaining agreement that:

13 (a) Includes a union security provision authorized in RCW
14 41.56.122, the state as payor, but not as the employer, shall, subject
15 to subsection (3) of this section, enforce the agreement by deducting
16 from the payments to bargaining unit members the dues required for
17 membership in the exclusive bargaining representative, or, for
18 nonmembers thereof, a fee equivalent to the dues; or

19 (b) Includes requirements for deductions of payments other than the
20 deduction under (a) of this subsection, the state, as payor, but not as
21 the employer, shall, subject to subsection (3) of this section, make
22 such deductions upon written authorization of the individual provider
23 (~~(or the)~~), family child care provider, or adult family home provider.

24 (3)(a) The initial additional costs to the state in making
25 deductions from the payments to individual providers (~~(or)~~), family
26 child care providers, and adult family home providers under this
27 section shall be negotiated, agreed upon in advance, and reimbursed to
28 the state by the exclusive bargaining representative.

29 (b) The allocation of ongoing additional costs to the state in
30 making deductions from the payments to individual providers (~~(or)~~),
31 family child care providers, or adult family home providers under this
32 section shall be an appropriate subject of collective bargaining
33 between the exclusive bargaining representative and the governor unless
34 prohibited by another statute. If no collective bargaining agreement
35 containing a provision allocating the ongoing additional cost is
36 entered into between the exclusive bargaining representative and the
37 governor, or if the legislature does not approve funding for the
38 collective bargaining agreement as provided in RCW 74.39A.300 (~~(or)~~),

1 41.56.028, or section 1 of this act, as applicable, the ongoing
2 additional costs to the state in making deductions from the payments to
3 individual providers (~~or~~), family child care providers, or adult
4 family home providers under this section shall be negotiated, agreed
5 upon in advance, and reimbursed to the state by the exclusive
6 bargaining representative.

7 (4) The governor and the exclusive bargaining representative of a
8 bargaining unit of family child care providers may not enter into a
9 collective bargaining agreement that contains a union security
10 provision unless the agreement contains a process, to be administered
11 by the exclusive bargaining representative of a bargaining unit of
12 family child care providers, for hardship dispensation for license-
13 exempt family child care providers who are also temporary assistance
14 for needy families recipients or WorkFirst participants.

15 **Sec. 4.** RCW 41.04.810 and 2006 c 54 s 4 are each amended to read
16 as follows:

17 Individual providers, as defined in RCW 74.39A.240, (~~and~~) family
18 child care providers, as defined in RCW 41.56.030, and adult family
19 home providers, as defined in RCW 41.56.030, are not employees of the
20 state or any of its political subdivisions and are specifically and
21 entirely excluded from all provisions of this title, except as provided
22 in RCW 74.39A.270 (~~and~~), 41.56.028, and section 1 of this act.

23 **Sec. 5.** RCW 43.01.047 and 2006 c 54 s 5 are each amended to read
24 as follows:

25 RCW 43.01.040 through 43.01.044 do not apply to individual
26 providers under RCW 74.39A.220 through 74.39A.300 (~~or to~~), family
27 child care providers under RCW 41.56.028, or adult family home
28 providers under section 1 of this act.

29 **PART II - NEGOTIATED RULE MAKING**

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.128 RCW
31 to read as follows:

32 (1) Solely for the purposes of negotiated rule making pursuant to
33 RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult
34 family home licensees is appropriate. As of the effective date of this

1 section, the exclusive representative of adult family home licensees in
2 the statewide unit shall be the organization certified by the American
3 arbitration association as the sole representative after the
4 association conducts a cross-check comparing authorization cards
5 against the department of social and health services' records and finds
6 that majority support for the organization exists. If adult family
7 home licensees seek to select a different representative thereafter,
8 the adult family home licensees may request that the American
9 arbitration association conduct an election and certify the results of
10 the election.

11 (2) In enacting this section, the legislature intends to provide
12 state action immunity under federal and state antitrust laws for the
13 joint activities of licensees and their exclusive representative to the
14 extent such activities are authorized by this chapter.

15 **Sec. 7.** RCW 70.128.010 and 2001 c 319 s 6 and 2001 c 319 s 2 are
16 each reenacted and amended to read as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

19 (1) "Adult family home" means a residential home in which a person
20 or persons provide personal care, special care, room, and board to more
21 than one but not more than six adults who are not related by blood or
22 marriage to the person or persons providing the services.

23 (2) "Provider" means any person who is licensed under this chapter
24 to operate an adult family home. For the purposes of this section,
25 "person" means any individual, partnership, corporation, association,
26 or limited liability company.

27 (3) "Department" means the department of social and health
28 services.

29 (4) "Resident" means an adult in need of personal or special care
30 in an adult family home who is not related to the provider.

31 (5) "Adults" means persons who have attained the age of eighteen
32 years.

33 (6) "Home" means an adult family home.

34 (7) "Imminent danger" means serious physical harm to or death of a
35 resident has occurred, or there is a serious threat to resident life,
36 health, or safety.

1 (8) "Special care" means care beyond personal care as defined by
2 the department, in rule.

3 (9) "Capacity" means the maximum number of persons in need of
4 personal or special care permitted in an adult family home at a given
5 time. This number shall include related children or adults in the home
6 and who received special care.

7 (10) "Resident manager" means a person employed or designated by
8 the provider to manage the adult family home.

9 (11) "Adult family home licensee" means a provider as defined in
10 this section who does not receive payments from the medicaid and state-
11 funded long-term care programs.

12 **Sec. 8.** RCW 70.128.040 and 1995 c 260 s 3 are each amended to read
13 as follows:

14 (1) The department shall adopt rules and standards with respect to
15 adult family homes and the operators thereof to be licensed under this
16 chapter to carry out the purposes and requirements of this chapter.
17 The rules and standards relating to applicants and operators shall
18 address the differences between individual providers and providers that
19 are partnerships, corporations, associations, or companies. The rules
20 and standards shall also recognize and be appropriate to the different
21 needs and capacities of the various populations served by adult family
22 homes such as but not limited to ~~((the))~~ persons who are
23 developmentally disabled ~~((and the))~~ or elderly. In developing rules
24 and standards the department shall recognize the residential family-
25 like nature of adult family homes and not develop rules and standards
26 which by their complexity serve as an overly restrictive barrier to the
27 development of the adult family homes in the state. Procedures and
28 forms established by the department shall be developed so they are easy
29 to understand and comply with. Paper work requirements shall be
30 minimal. Easy to understand materials shall be developed for
31 applicants and providers explaining licensure requirements and
32 procedures.

33 (2)(a) In developing the rules and standards, the department shall
34 consult with all divisions and administrations within the department
35 serving the various populations living in adult family homes, including
36 the division of developmental disabilities and the aging and adult
37 services administration. Involvement by the divisions and

1 administration shall be for the purposes of assisting the department to
2 develop rules and standards appropriate to the different needs and
3 capacities of the various populations served by adult family homes.
4 During the initial stages of development of proposed rules, the
5 department shall provide notice of development of the rules to
6 organizations representing adult family homes and their residents, and
7 other groups that the department finds appropriate. The notice shall
8 state the subject of the rules under consideration and solicit written
9 recommendations regarding their form and content.

10 (b) In addition, the department shall engage in negotiated rule
11 making pursuant to RCW 34.05.310(2)(a) with the exclusive
12 representative of the adult family home licensees selected in
13 accordance with section 6 of this act and with other affected interests
14 before adopting requirements that affect adult family home licensees.

15 (3) Except where provided otherwise, chapter 34.05 RCW shall govern
16 all department rule-making and adjudicative activities under this
17 chapter.

18 PART III - GENERAL PROVISIONS

19 NEW SECTION. Sec. 9. Part headings used in this act are not any
20 part of the law.

21 NEW SECTION. Sec. 10. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. Sec. 11. If any part of this act is found to be in
26 conflict with federal requirements that are a prescribed condition to
27 the allocation of federal funds to the state, the conflicting part of
28 this act is inoperative solely to the extent of the conflict and with
29 respect to the agencies directly affected, and this finding does not
30 affect the operation of the remainder of this act in its application to
31 the agencies concerned. Rules adopted under this act must meet federal
32 requirements that are a necessary condition to the receipt of federal

1 funds by the state.

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